

Subpart 2. Health Insurance Availability and Renewability.

§ 58-68-40. Guaranteed availability of coverage for employers in the small group market.

- (a) Issuance of Coverage in the Small Group Market. –
 - (1) In general. – Subject to subsections (c) through (f) of this section, each health insurer that offers health insurance coverage in the small group market in this State:
 - a. Must accept every small employer that applies for the coverage; and
 - b. Must accept for enrollment under the coverage every eligible individual who applies for enrollment during the period in which the individual first becomes eligible to enroll under the terms of the group health insurance plan and shall not place any restriction that is inconsistent with G.S. 58-68-35 on an eligible individual being a participant or beneficiary.
 - (2) Eligible individual defined. – For the purposes of this section, "eligible individual" means, with respect to a health insurer that offers health insurance coverage to a small employer in the small group market, such an individual in relation to the employer as shall be determined:
 - a. In accordance with the terms of the plan,
 - b. As provided by the health insurer under rules of the health insurer that are uniformly applicable in this State to small employers in the small group market, and
 - c. In accordance with all applicable State laws governing the health insurer and the market.
- (b) Special Rules for Network Plans. –
 - (1) In general. – In the case of a health insurer that offers health insurance coverage in the small group market through a network plan, the health insurer may:
 - a. Limit the employers that may apply for coverage to those with eligible individuals who live, work, or reside in the service area for the network plan; and
 - b. Within the service area of the network plan, deny coverage to the employers if the health insurer has demonstrated to the Commissioner that: (i) it will not have the capacity to deliver services adequately to enrollees of any additional groups because of its obligations to existing group contract holders and enrollees, and (ii) it is applying this subdivision uniformly to all employers without regard to the claims experience of those employers and their employees (and their dependents) or any health status-related factor relating to the employees and dependents.
 - (2) 180-day suspension upon denial of coverage. – A health insurer, upon denying health insurance coverage in any service area in accordance with sub-subdivision (1)b. of this subsection, shall not offer coverage in the small group market within the service area for a period of 180 days after the date the coverage is denied.
- (c) Application of Financial Capacity Limits. –
 - (1) In general. – A health insurer may deny health insurance coverage in the small group market if the health insurer has demonstrated to the Commissioner that:

- a. It does not have the financial reserves necessary to underwrite additional coverage; and
 - b. It is applying this subdivision uniformly to all employers in the small group market in the State consistent with this Chapter and without regard to the claims experience of those employers and their employees (and their dependents) or any health status-related factor relating to the employees and dependents.
- (2) 180-day suspension upon denial of coverage. – A health insurer upon denying health insurance coverage in accordance with subdivision (1) of this subsection shall not offer coverage in the small group market in the State for a period of 180 days after the date the coverage is denied or until the health insurer has demonstrated to the Commissioner that the health insurer has sufficient financial reserves to underwrite additional coverage, whichever is later. The Commissioner may apply this subsection on a service-area-specific basis.
- (d) Exception to Requirement for Failure to Meet Certain Minimum Participation or Contribution Rules. –
 - (1) In general. – Subsection (a) of this section does not preclude a health insurer from establishing employer contribution rules or group participation rules for the offering of health insurance coverage in connection with a group health insurance plan in the small group market, as allowed under this Chapter.
 - (2) Rules defined. – For the purposes of subdivision (1) of this subsection:
 - a. "Employer contribution rule" means a requirement relating to the minimum level or amount of employer contribution toward the premium for enrollment of participants and beneficiaries; and
 - b. "Group participation rule" means a requirement relating to the minimum number of participants or beneficiaries that must be enrolled in relation to a specified percentage or number of eligible individuals or employees of an employer.
- (e) Exception for Coverage. – Subsection (a) of this section does not apply to:
 - (1) Health insurance coverage offered by a health insurer if the coverage is made available in the small group market only through one or more bona fide associations.
 - (2) A self-employed individual as defined in G.S. 58-50-110(21a), except as otherwise provided for the basic and standard health care plans or other plans under G.S. 58-50-126 under the North Carolina Small Employer Group Health Coverage Reform Act. (1997-259, s. 1(c); 1999-132, s. 4.6; 2006-154, s. 4.)